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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-737

LOCAL UNION NO. 680,
MILK DRIVERS AND DAIRY EMPLOYEES
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Cross-Petitioner,

vs.

LUCIA NOVEMBRE and ANNA DELUCA,

Respondents.

BRIEF ON BEHALF OF RESPONDENTS IN OPPOSITION TO THE CROSS PETITION OF LOCAL 680, MILKDRIVERS, ETC.

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QUESTION PRESENTED

Can a Union be held liable in damages because of the common law or equitable fraud, or misrepresentation, of its officers?

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REASONS FOR NOT GRANTING WRIT OF CERTIORARI

The question presented on the Cross Petition of Local 680 is whether a Union may be held liable in damages occasioned by its common law or equitable fraud or misrepresentation. The affirmative answer to this question is so well settled that no review is necessary.

The Cross Petitioner, Local 680, misconstrues the basis of the trial court's imposition of liability upon the Union. The trial court found that the Union's president and other representative had fraudulently misrepresented that the respondents would "carry over their respective pension credits from Local 680 to Local 607". (A13)[1]

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[1] The reference of A13 is to the Appendix filed by the Petitioner, Ice Cream Industries Drivers.

The trial court said:

"Insofar as they (Local 680) are concerned this is a simple case of misrepresentation with all of the essential elements[2] having been proved and the appropriate burden satisfied.

In Louis Schlessinger Company v. Wilson, 22 NJ 576, 585 (1956), the Supreme Court of New Jersey stated that the necessary elements for a fraud action are a false representation, knowledge or belief by the defendant of the falsity, and intention that the plaintiff act thereon, reasonable reliance in acting thereon by the plaintiff and resultant damage.

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[2] Referring to the "essential elements" of fraud or estoppel. See 3 Pomeroy's Equity Jurisprudence,, Section 805(5thEd.1941); Mount Vernon Fire Insurance Co. v. Highway Trailer Co., 385 U.S. 834, 87 S. Ct.77, 17 L.Ed.2d., 68(1966); Carlsen v. Masters, Mates & Pilots Pension Plan Trust, 80 N.J. 334, 339(1979); Restatement of Contracts, Sec. 90.

The court has already indicated that there was a misrepresentation. Mr. McKinley admits that the representation was untrue in that he knew that there was no reciprocal agreement.

Those persons acting on behalf of the unions were authorized to do so. It was intended that the audience rely upon the representations.

Their reliance, as already indicated, was reasonable. And they sustained damages as a result of the loss of their pension benefits.

The court might also add that even if the version of Mr. McKinley were accepted by the court, namely, that plaintiffs were advised that there was no reciprocal agreement, but that the two funds would try to reach one, even when that fact was known to both of the funds and to the unions, no one bothered to inform the plaintiffs, even though there was a clear duty to do so at the time.

So the failure to speak as of that moment was likewise a misrepresentation.

Therefore, based upon the foregoing judgment shall be entered in favor of the plaintiffs and against the unions for damages equivalent to the pension benefits plaintiffs would have received less the actual contributions plus interest to be paid by the pension fund." (A18 and 19)

Therefore, the liability of Local 680 is not based upon the union's breach of contract for failure to properly represent the respondents[3] but upon a "simple case of misrepresentation" or common law fraud.

The Cross Petition argues that no failure of Local 680 to fairly represent respondents had been established under the standards laid down in Vaca v. Sipes, supra and its progeny, i.e., a union's failure to fairly represent its

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[3]Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 Law Ed.842 (1967).

members constitutes a breach of its contract with its member(s). For the reasons just stated, this misconstrues the holding of the trial court.

Of course, a union--as well as any other person or entity--must respond in damages for its fraud or misrepresentation, separate and apart from any breach of contract/duty of fair representation violation. Cross Petitioner does not and has not argued to the contrary.

CONCLUSION

For the reasons expressed above, the Cross Petitioner for Certiorari should be denied.

Respectfully submitted,

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BY: _____
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Dated: December 15, 1982
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